

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

POLCOM USA, LLC,

Case No.: 1:20-cv-9206 (NRB)

Plaintiff : :

vs. : :

AFFILIATED FM INSURANCE COMPANY :  
and ZURICH AMERICAN INSURANCE  
COMPANY, : :

Defendants. : :

M. A. MORTENSON COMPANY, : :

Plaintiff : :

Case No.: 1:22-cv-0092 (NRB)

vs. : :

ZURICH AMERICAN INSURANCE :  
COMPANY, : :

Defendant. : :

**WHEREAS**, on October 3, 2020, Polcom USA, LLC (“Polcom”) commenced an action in the United States District Court for the Southern District of New York captioned: *Polcom USA, LLC v. Affiliated FM Insurance Company, et al.*, Case Number 1:20-cv-09206-NRB (the “Polcom Action”), which is pending before Judge Naomi Reice Buchwald;

**WHEREAS**, on September 15, 2021, M.A. Mortenson Company (“Mortenson”) commenced an action in the Washington State Superior Court, King County styled *M.A. Mortenson Company v. Zurich American Insurance Company*;

**WHEREAS**, on October 14, 2021, Zurich American Insurance Company (“Zurich”) removed the *M.A. Mortenson Company v. Zurich American Insurance Company* action to the United States District Court for the Western District of Washington and the action proceeded under the Case Number 2:21-cv-1407-RSM (the “Mortenson Action”);

**WHEREAS**, the Polcom Action and the Mortenson Action are collectively referred to herein, as the “Actions.”

**WHEREAS**, on October 17, 2021, Zurich moved to transfer the Mortenson Action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1404(a);

**WHEREAS**, on December 21, 2021, the United States District Court for the Western District of Washington granted Zurich’s motion to transfer the Mortenson Action to the United States District Court for the Southern District of New York;

**WHEREAS**, on January 5, 2022, the Mortenson Action was transferred to the United States District Court for the Southern District of New York under Case Number: 1:22-cv-0092 and was referred to Judge Buchwald as possibly related to the Polcom Action;

**WHEREAS**, on January 6, 2022, the Mortenson Action was accepted as related to the Polcom Action, and was assigned to Judge Buchwald;

**WHEREAS**, the Polcom Action addresses Polcom’s claim for insurance coverage resulting from alleged water damage to prefabricated modular hotel rooms in connection with the construction of a hotel in Seattle, Washington (the “Hotel”) and the Mortenson Action addresses Mortenson’s claim for insurance coverage resulting from alleged water damage to the same prefabricated modular hotel rooms, as are at issue in the Polcom Claim, in connection with the

construction of the Hotel. The two actions, therefore, involve common legal theories, common factual allegations, duplicative legal claims, and overlapping parties;

**WHEREAS**, Rule 42(a) of the Federal Rules of Civil Procedure permits a court to consolidate actions pending before it if those actions involve a “common question of law or fact;”

**WHEREAS**, Polcom, Mortenson, Affiliated FM Insurance Company and Zurich (the “Parties”) now seek to consolidate the Polcom Action and the Mortenson Action pursuant to Rule 42(a) because each action asserts substantially similar claims and raises substantially similar questions of fact and law regarding liability and damages;

**WHEREAS**, the Polcom Action and the Mortenson Action are both properly venued in the United States District Court for the Southern District of New York and involve common questions of law and fact, and thus are suitable for consolidation under Rule 42(a);

**WHEREAS**, consolidating these two actions would serve the interests of justice: increases judicial efficiency, avoids duplicative evidence, procedures, and inconsistent adjudications, precludes waste, and alleviates potential burdens to the court and all parties involved;

**WHEREAS**, neither a scheduling order nor a trial date has been entered in either action, and thus no prejudice to any Party will be suffered by consolidating the Polcom Action and Mortenson Action for pre-trial purposes;

**IT IS HEREBY STIPULATED AND AGREED**, by and among the Parties hereto through their respective attorneys of record that:

1. The Polcom Action and Mortenson Action shall be consolidated for all pre-trial purposes, including discovery.

2. All papers subsequently filed in connection with either of the Actions shall be filed only in the Polcom Action and the captions of such papers shall bear the title of this Stipulation;

3. The submission of previously filed pleadings in the Actions with the consolidated caption is unnecessary and such papers shall be deemed filed under the consolidated action with the consolidated caption;

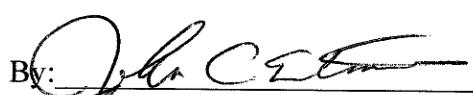
4. All Orders of the respective Courts in the Actions remain in full force and effect in the consolidated action.

5. All questions regarding consolidation of the Actions with respect to trial, if necessary, are deferred until the Polcom Action and Mortenson Action are ready for trial, with all Parties preserving any and all arguments and counter-arguments with respect to consolidation of the Actions for purposes of trial, if any;

6. The Parties shall file a written report outlining a discovery plan as contemplated by Federal Rule of Civil Procedure 26(f), including where the Parties disagree on certain provisions of the plan a summary of the Parties' positions with respect thereto, by no later than January 28, 2022; and

7. The Court shall hold a scheduling conference as contemplated by Federal Rule of Civil Procedure 16 on February 2, 2022, at 1:30 p.m. via teleconference.

**ERTMAN DULIS & HELISEK PLLC**

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Dated: January 19, 2022

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*Affiliated FM Insurance Company*

Dated: January   , 2022

WHEREAS, Polcom, Mortenson, Affiliated FM Insurance Company and Zurich (the "Parties") now seek to consolidate the Polcom Action and the Mortenson Action pursuant to Rule 42(a) because each action asserts substantially similar claims and raises substantially similar questions of fact and law regarding liability and damages;

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WHEREAS, consolidating these two actions would serve the interests of justice: increases judicial efficiency, avoids duplicative evidence, procedures, and inconsistent adjudications, precludes waste, and alleviates potential burdens to the court and all parties involved;

WHEREAS, neither a scheduling order nor a trial date has been entered in either action, and thus no prejudice to any Party will be suffered by consolidating the Polcom Action and Mortenson Action for pre-trial purposes;

**IT IS HEREBY STIPULATED AND AGREED**, by and among the Parties hereto through their respective attorneys of record that :

1. The Polcom Action and Mortenson Action shall be consolidated for all pre-trial purposes, including discovery.
2. All papers subsequently filed in connection with either of the Actions shall be filed only in the Polcom Action and the captions of such papers shall bear the title of this Stipulation;
3. The submission of previously filed pleadings in the Actions with the consolidated caption is unnecessary and such papers shall be deemed filed under the consolidated action with the consolidated caption;
4. All Orders of the respective Courts in the Actions remain in full force and effect in the consolidated action.
5. All questions regarding consolidation of the Actions with respect to trial, if necessary, are deferred until the Polcom Action and Mortenson Action are ready for trial, with all Parties preserving any and all arguments and counter-arguments with respect to consolidation of the Actions for purposes of trial, if any;
6. The Parties shall file a written report outlining a discovery plan as contemplated by Federal Rule of Civil Procedure 26(f), including where the Parties disagree on certain provisions of the plan a summary of the Parties' positions with respect thereto, by no later than January 28, 2022; and
7. The Court shall hold a scheduling conference as contemplated by Federal Rule of Civil Procedure 16 on \_\_\_\_\_, 2022.

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Dated: January \_\_, 2022

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Dated: January 19, 2022

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Dated January 18, 2022

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*Atttorneys for Defendant*  
*Zurich American Insurance Company*

Dated: January 18, 2022

SO ORDERED:

*Naomi Reice Buchwald*  
Hon. Naomi Reice Buchwald  
United States District Court Judge

Dated: January 21, 2022

\*Application for admission *pro hac vice* filed

\*\*Application for admission *pro hac vice* to be filed